



Decision

Matter of: Young Enterprises, Inc.

File: B-256851.2

Date: August 11, 1994

Donald O. Pratt, Esq., and Paul H. Sanderford, Esq., Canterbury, Stuber, Pratt, Elder & Gooch, for the protester. Alan M. Glen, Esq., Fulbright & Jaworski, for White Construction Co., an interested party. Howard L. Hardegree, Esq., General Services Administration, for the agency. Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency assigned proposal an unfairly low score under evaluation criterion "past performance" is denied where record demonstrates that evaluators reasonably concluded, based on unfavorable reports concerning the protester's performance on several prior contracts, that protester's past performance had been less than satisfactory.

DECISION

Young Enterprises, Inc. protests the General Services Administration's award of a contract to White Construction Co. under request for proposals (RFP) No. GS-07P-93-HUC-0083, for construction work at the Internal Revenue Service (IRS) Center in Austin, Texas. Young disputes the evaluation of its technical proposal and contends that its combination of technical merit and price represented the best value to the government.

We deny the protest.

The RFP provided for award of a fixed-price contract to the offeror whose proposal was determined to be most advantageous to the government, considering both price and technical merit. The solicitation advised that technical merit would be more important than price, but noted that as proposals became more equal in technical merit, price would become more important.

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The RFP set forth three factors, in descending order of importance, to be considered in the technical evaluation of proposals: past performance, specialized experience, and technical approach. Offerors were advised that to evaluate their past performance and ability, the agency intended to contact individuals and firms for whom the offeror had previously worked. To this end, offerors were instructed to furnish a minimum of three references for projects comparable in size and scope to the one here which the offeror had completed within the past 5 years.

Four offerors, including Young and White, submitted proposals by the January 28, 1994, closing date. The proposals were evaluated by a Source Selection Evaluation Board, which recommended that all four be included within the competitive range. The agency conducted negotiations with the four offerors and requested best and final offers. The final technical scores and prices were as follows:

<u>Offeror</u>	<u>Technical Score</u>	<u>Price</u>
White	3.40	\$7,317,100
Young	2.60	\$7,067,956
Offeror A	2.40	\$7,198,400
Offeror B	2.35	\$7,431,340

The evaluators concluded that White's proposal, while not lowest in price, represented the best value to the government due to its technical superiority. The Source Selection Authority concurred in the recommendation of White for award, and on March 9, the agency awarded White a contract.

Young argues that its proposal received an unfairly low score under the past performance evaluation factor, which resulted in the proposal's receiving an overall technical score lower than White's.¹ In this regard, Young's

¹In its initial protest, filed before it had been debriefed by the agency, the protester also argued that the agency had ignored its lower price in selecting White for award, that the evaluators had not given past performance appropriate weight in the technical evaluation, and that the evaluators had not properly evaluated its specialized experience. In addition, in the amendment to its protest filed after the debriefing, Young asserted that GSA had failed to evaluate properly the past work experience of its proposed project manager and supervisor.

(continued...)

proposal received a score of 2 (out of a possible 5) and White's proposal received a score of 4 for past performance, while the two proposals received identical scores of 3 under the other two evaluation factors. The protester contends that in evaluating its past performance, the evaluators relied on several unfavorable references which they should not have considered.

The evaluation of technical proposals is primarily the responsibility of the contracting agency since the agency is responsible for defining its needs and the best method of accommodating them, and it must bear the burden of any difficulties resulting from a defective evaluation. Federal Envtl. Servs., Inc., B-250135.4, May 24, 1993, 93-1 CPD ¶ 398. In reviewing protests challenging an agency's evaluation of proposals, we will not substitute our judgment for that of the agency regarding the merits of proposals; rather, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. Id.

¹(...continued)

The agency responded to these arguments in its report, noting that it had considered price in the selection process, but had concluded that White's combination of technical merit and price represented the best value to the government, that it had weighed past performance most heavily in scoring proposals (and that it was in fact due to Young's low score under the past performance criterion that its proposal received an overall technical score lower than White's), and that it had given Young appropriate credit for its specialized experience. In commenting on the agency report, the protester did not attempt to rebut the agency arguments regarding these matters. We therefore consider it to have abandoned these grounds of protest and will not consider them. PAI Corp., B-253203.2; B-253203.3, Aug. 26, 1993, 93-2 CPD ¶ 125.

The agency also responded in its report to the protester's argument regarding the past work experience of its project manager and supervisor, maintaining that the resumes submitted by Young did not demonstrate that either individual had worked on at least two similar projects within the past 5 years, as required by the RFP. In commenting on the agency report, Young disputed the agency's conclusion regarding its proposed project manager's lack of demonstrated experience. We see no evidence, however, and the protester does not assert, that the impact of any error in this aspect of the evaluation was other than de minimis. Accordingly, we will not consider this basis of protest further.

Based on our review of the record here, we conclude, as discussed below, that the agency's evaluation of Young's past performance was reasonable and in accord with the evaluation criteria.

To evaluate Young's past performance, the evaluators contacted the references that the protester had listed in its proposal and references for two other contracts which they knew Young to have performed.² The references were asked to evaluate various aspects of Young's performance, including its adherence to the project schedule, its coordination of subcontractors, its cooperativeness and sense of commitment to the project, and the quality of its finished product. The references were also asked whether, if they had a choice, they would contract with the firm again for the same services. Based on the responses that they received to these questionnaires, the evaluators concluded that Young's past performance had been less than satisfactory in several respects.

Several of the individuals contacted regarding Young's past performance stated that they would not choose to contract with the firm again. One, the contracting officer for a renovation and modernization project at the Terminal Annex in Dallas, Texas, noted that she would not choose to work with the protester again because its cooperation on the project had been poor and its coordination with other contractors unsatisfactory. Another reference, the plant manager during Young's installation of a computer power protection system at the IRS Service Center in Austin (the same facility for which work is sought under this solicitation), reported that Young had not followed the project's phasing plan and had caused significant agency operational disruption; that it had not effectively coordinated the work of the subcontractors and that, as a result, the agency had experienced "total chaos"; that the contractor had not been cooperative and had ignored the agency requirement for 24-hour daily operations; that the finished product had been very poor; and that the agency had been required to correct contract deficiencies. A third reference, the contracting officer for an asbestos fireproofing removal project at the federal building in Lubbock, Texas, which was terminated for convenience by the government only 6 months after award due to the discovery of asbestos in the building's air handling system, stated that she had been dissatisfied with Young's performance and would

²The source selection plan provided for consideration of offerors' performance on contracts other than those listed in their proposals where the evaluators had knowledge of contracts not listed or such contracts were discovered during interviews.

not choose to contract with it again because she felt that Young had not worked with GSA to solve the unanticipated asbestos problem and had attempted to manipulate the situation to its own advantage to obtain either a termination for convenience or a large change order. A second agency official familiar with the same contract, the Deputy Director of the Design and Construction Division, also stated that he would not choose to contract with Young again because he found the negotiation of modifications with the protester to be difficult.³

Young argues that the evaluators should not have considered the unfavorable comments concerning its performance on the prior IRS contract since the project was completed in 1987, more than 5 years prior to issuance of this solicitation. According to the protester, the RFP provided only for consideration of projects completed within the past 5 years. We disagree. The RFP did not limit the scope of the projects to be considered; it provided simply for evaluation of an offeror's past performance.⁴ Although it did request references for projects completed within the past 5 years, the solicitation in no way implied that the evaluation of past performance would be based exclusively on those references.

Young also asserts generally that the IRS contract and the Lubbock project are not similar to the project under this RFP and therefore should not have been considered. In support of its contention, Young cites the definition of "similar work" in the source selection plan, which refers to projects which involved a minimum number of square feet or dollar value and included construction phasing within user-occupied space. The RFP itself did not adopt this definition, however, and while it directed offerors to provide information on contracts comparable in scope to the

³A third reference, a GSA section head, also expressed reservations about contracting with Young again based on the agency's experience under this contract.

⁴The source selection plan, on the other hand, did state that the evaluators were to consider, under past performance, "the quality of the offeror's past performance in the last [5] years in carrying out work of a similar nature. . . ." (Emphasis added.) The fact that the evaluators may have deviated from the source selection plan does not provide a basis for questioning the validity of the award selection, however, since source selection plans are internal agency instructions and as such do not give outside parties any rights. Burnside-Ott Aviation Training Center, Inc.; Reflectone Training Sys., Inc., B-233113; B-233113.2, Feb. 15, 1989, 89-1 CPD ¶ 158.

present one, see RFP part 2, section 3.1, it did not limit the past performance evaluation to those contracts.

Other than suggesting that the two projects do not meet the definition of similar work in the source selection plan, Young does not explain why they should not be considered relevant to the past performance evaluation here. That is, the critical information provided by the references on the two projects relates not as much to the technical aspects of Young's performance--for which the similarity of the projects in terms of dollar value or square footage might be significant--as to the nature of Young's working relationship with the agencies during performance of the contracts, information which clearly is relevant to evaluating Young's past performance regardless of the scope of work under the projects involved.

The protester also argues, with regard to the IRS contract, that the individual who provided the reference was not qualified to comment on its performance since he was not a contracting officer or contract administrator. Again, we disagree. Although the plant manager was not knowledgeable about certain aspects of the contract's administration--for example, he stated that he did not know whether or not GSA had pursued liquidated damages--he was clearly qualified to comment on such matters as the amount of disruption to ongoing agency operations caused by the contractor.

Young argues next that the evaluators should not have considered the unfavorable Lubbock references since the project was not completed and since the references criticized aspects of its past performance unrelated to the performance-related considerations set forth in the RFP.

We do not think that the evaluators were precluded from considering Young's performance on the Lubbock project simply because the project was terminated prior to completion. The primary criticism of Young's performance on that project was that it had been uncooperative and difficult to work with, matters unrelated to the duration of the performance effort. Moreover, we do not think that the evaluators were precluded from considering aspects of Young's past performance such as its cooperativeness and commitment to the project simply because the solicitation did not explicitly identify them as performance-related considerations. While solicitations must identify the major factors that the agency intends to consider in the evaluation of proposals, they need not identify the areas of each factor that might be considered, if the unidentified areas are reasonably related to or encompassed by the stated criteria. Drytech, Inc., B-246152.2, Feb. 24, 1992, 92-1 CPD ¶ 217.

In conclusion, we think that it was neither unreasonable nor inconsistent with the stated evaluation criteria for the agency to have considered the unfavorable IRS and Lubbock references in evaluating Young's past performance. Further, we think that the evaluators could reasonably have concluded, based on these references and the unfavorable Federal Annex one, that Young's past performance had been less than satisfactory. We therefore have no basis upon which to question the agency's scoring of technical proposals or its conclusion that White's combination of technical merit and price represented the best value to the government.

The protest is denied.

/s/ Ronald Berger
for Robert P. Murphy
Acting General Counsel